

Capital Reporting Company  
Garcia, Bryan 06-09-2011

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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Alexandria Virginia

-----:  
ALISHA W. WILKES, :  
 :  
 :  
 : Plaintiff, :  
 :  
 vs. : Case No. :  
 :  
 :  
 : EXPERIAN INFORMATION : 1:10cv1160 :  
 : SOLUTIONS, INC, et al., :  
 :  
 :  
 : Defendants. :  
 -----:

McLean, Virginia  
Thursday, June 9, 2011

Deposition of:

BRYAN GARCIA

called for oral examination by counsel for  
Defendant GMAC Mortgage, pursuant to notice, at the  
office of Troutman Sanders, L.L.P., 150 West Main  
Street, Suite 1600, McLean, Virginia, before Amber L.  
Dill, of Capital Reporting Company, a Notary Public in  
and for the Commonwealth of Virginia, beginning at  
10:17 a.m., when were present on behalf of the  
respective parties:

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1 A P P E A R A N C E S

2 On behalf of Plaintiff:

3 SUSAN M. ROTKIS, ESQUIRE (Via Telephone)  
4 GARY ABBOTT, ESQUIRE (Via Telephone)  
5 LEONARD A. BENNETT (Via Telephone)  
6 Consumer Litigation Associates, P.C.  
7 12515 Warwick Boulevard  
8 Suite 110  
9 Newport News, Virginia 23606  
10 (757) 930-3660

11 On behalf of Defendant GMAC MORTGAGE:

12 ETHAN G. OSTROFF, ESQUIRE (Via Telephone)  
13 Troutman Sanders, L.L.P.  
14 222 Central Park Avenue  
15 Suite 2000  
16 Virginia Beach, Virginia 23462  
17 (757) 687-7500

18 On behalf of Defendant AMERICAN FUNDING:

19 DANIELLE HALL-MCIVOR, ESQUIRE (Via Telephone)  
20 Taylor & Walker, P.C.  
21 555 Main Street  
22 P.O. Box 3490  
Norfolk, Virginia 23514  
(757) 625-7300

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1 Q And do you recall why that tenant moved out  
2 in the spring of 2010?

3 A Because the court case was settled and she  
4 was prepared to sell the house.

5 Q And did Ms. Wilkes ask the tenant to leave  
6 the property?

7 A The lease was up and she wasn't going to  
8 renew it, no. And they didn't want to buy the house  
9 so they didn't -- they couldn't stay.

10 Q Okay. Did that lease have an option to  
11 allow the renters to stay month to month?

12 A I believe so, yeah.

13 Q And did Ms. Wilkes give them a notice to  
14 vacate the house?

15 A Not until we had it on the market because  
16 they -- they had -- Ms. Wilkes wanted to hopefully  
17 sell it before they actually physically moved out, but  
18 they weren't so kind on the house and it was -- they  
19 had -- they just had a bunch of stuff in there and it  
20 was making it hard to market the property. So she did  
21 give them notice. And I think that was sometime the  
22 end of May that they were to be out.

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1 in early April of 2010, did it stay on the market  
2 until it was sold?

3 A It was on the market through April. I think  
4 we got a contract sometime in April. Pretty quickly  
5 we got a contract. The buyer did their home  
6 inspection and then they decided not to go through  
7 with the sale. They just felt there was too much that  
8 needed to be done to the house. Like I mentioned, the  
9 current tenants were not real kind on the house, and  
10 they had tons of stuff there. So that buyer backed  
11 out.

12 And then I suggested to Ms. Wilkes that she  
13 wait until the tenants were out and had an opportunity  
14 to get anything done to the house that needed to be  
15 done through the tenant moving out and their security  
16 deposit and all that.

17 And so we took it off the market, I think  
18 early May through maybe early June time frame. And  
19 then it came back on the market in early June, once  
20 everything was cleared out of the property and it  
21 showed a little bit better without all their stuff in  
22 there. And then we got a contract.

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1 Q Okay. Once the house was listed the market  
2 for sale, did the plaintiff ever discuss with you  
3 anything other than selling the house at that point?

4 A No. I mean, I know her main goal was she  
5 needed to do something in order to take care of her  
6 attorney's fees and, as far as I knew, I don't think  
7 she at that point had entertained anything else but  
8 she may have. I don't know.

9 Q And your understanding was that she was  
10 looking to sell the house by putting it on the market,  
11 right?

12 A Yeah, as far as I know.

13 Q Do you know when the last time the plaintiff  
14 was physically at the house?

15 A I mean, I don't know if she came by at all  
16 during the time that the tenants were there. I mean,  
17 I didn't physically see her at the house any time  
18 after that. And I don't recollect if she even was  
19 able to make it by the house with me prior to it going  
20 on the market or while it was on the market or  
21 anything. I know she wanted to try to get by. Now,  
22 she may have come by on her own. I don't know.

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1           A     I think I told you earlier. I think the  
2 inspection -- after the inspection, the buyers decided  
3 not to go forward and they voided the contract.

4           Q     All right. Can you take a look at 2785,  
5 please.

6           A     Okay.

7           Q     Okay. The bottom of that page an e-mail  
8 from Ms. Wilkes and its dated May 21, 2010.

9           A     Uh-huh.

10          Q     When it refers to the "Mormann,"  
11 M-o-r-m-a-n-n --

12          A     Uh-huh.

13          Q     -- that's the people who were renting the  
14 house?

15          A     Correct.

16          Q     And did they -- did they vacate the house at  
17 the end of May?

18          A     Yes.

19          Q     All right. Sir, let's -- you have another  
20 stack that includes documents from Exhibit 4 in front  
21 of you that are Bates stamped 2908 to 3344, right?

22          A     Correct.

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1 Q Is that, to your recollection, when the  
2 closing was?

3 A I believe so. It would state on the HUD-1  
4 specifically.

5 Q Do me a favor and turn to 2912 and 2913.

6 A Okay.

7 Q Am I correct that each of these documents is  
8 a list of the Realtors who came to look at the house?

9 A Correct.

10 Q So on 2913 am I correct that the -- at the  
11 top of the page there are entries on top -- three  
12 entries that are dated 4/10?

13 A Correct.

14 Q Is that, to the best of your recollection,  
15 the first time someone came to look at the house?

16 A To the best of my recollection, yep.

17 Q And would these documents typically list  
18 everyone or -- strike that.

19 Would these documents typically list every  
20 agent that has come to look the house with a potential  
21 buyer?

22 A Generally. Unless somebody got missed on

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1 Q Now, am I correct that once this document  
2 was signed, that Ms. Wilkes could not decide to take  
3 the house off the market?

4 A No. A seller can decide to take the house  
5 off the market and ask for a withdrawal of the listing  
6 agreement.

7 Q Okay. Can you take a look at 2932, please.

8 A Okay.

9 Q Can you see a paragraph that starts with  
10 number -- number 9? It's called "broker duties" and  
11 then, under subparagraph D, the sentence that begins,  
12 "Upon full ratification of this agreement, broker  
13 shall enter listing information into the MLS  
14 database" --

15 A Uh-huh.

16 Q -- "on or before April 12th, 2010"?

17 A Uh-huh.

18 Q Do you recall whether or not it was listed  
19 by that date?

20 A I don't remember the specific date that she  
21 chose to do it, but it was before April 12th, 2010.

22 Q Okay. And once it was actually entered into



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1 the MLS database, am I correct that your understanding  
2 was that plaintiff desired to sell the house?

3 A Yeah.

4 Q And that she never discussed anything with  
5 you other than selling the house?

6 A I don't recollect any discussions about  
7 anything other than selling the house.

8 Q Okay. Can you take a look at 2935, please.

9 A Okay.

10 Q Under paragraph 20, subparagraph A.

11 A Uh-huh.

12 Q Do you recall whether or not the lien in the  
13 name of Surovell, Markle, Isaacs & Levy PLC, in the  
14 amount \$210,000 was ever reduced?

15 A Do I recall if it was ever reduced? I  
16 believe so. I think the HUD-1 showed \$190,000, if I  
17 remember correctly.

18 Q Do you know why it was reduced?

19 MR. ABBOTT: Object as to form.

20 BY MR. OSTROFF:

21 Q Do you know why the lien in the amount of  
22 \$210,000 that's shown on document no. 2935 was reduced

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1 Ms. Wilkes received after the sale of the home?

2 A That would be my assumption, yes.

3 Q Okay. Take a look at 3081.

4 A Okay.

5 Q And it's a document that titled "regional  
6 sales contract," and am I correct that it goes through  
7 page 3096?

8 A The contract itself goes to 3090. Then  
9 there's the Virginia jurisdictional after that, which  
10 is a part of it. And it you want to be real  
11 technical, 3097, the home inspection, is a part of it.  
12 3098, FHA financing addendum, is a part of it. 3101  
13 is a part of it. 3102 is a part of it.

14 So if you want to add on all addendums, of  
15 course, the last one you just looked at was the  
16 contract itself.

17 Q Right. And on 3081, it's dated April 21st,  
18 2010?

19 A Yes, sir.

20 Q Is that the first contract that Ms. Wilkes  
21 entered into to sell this property?

22 A Yes, I believe so.

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1 Q And that sales price of \$365,000?

2 A Uh-huh.

3 Q That obviously was less than what she  
4 ultimately sold the home for, right?

5 A Correct.

6 Q Do you know why she accepted this lower  
7 amount in April?

8 A As I mentioned before, the tenant were in  
9 the house still. They had tons of clutter. The house  
10 was in rough shape. So I looked at it as an  
11 opportunity just to go ahead and move on and move  
12 forward with it.

13 Q And am I correct that it was the purchasers  
14 that are identified in this regional sales contract  
15 who terminated this regional sales contract?

16 A Yes, sir.

17 Q And do you recall when that was?

18 A Shortly after their home inspection.

19 Q If you could take a look at 3108, please.

20 A Okay.

21 Q Actually, before we talk about that, let's  
22 talk about 3110, and it's titled "release of sales

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1 contract and deposit."

2 A What number?

3 Q I'm sorry. 3110.

4 A 3110, yep.

5 Q And it that what you were just referring to

6 when we discussed what happened with the sales

7 contract --

8 A Correct.

9 Q -- that was entered into on April 21st,  
10 2010?

11 A Correct.

12 Q So that contract was -- strike that.

13 So am I correct that, on May 5th, 2010, the  
14 persons who were contemplating purchasing the home  
15 decided that they wanted to terminate the sales  
16 contract?

17 A Correct.

18 Q And am I correct that Ms. Wilkes did not  
19 find out about this until the date of her signature,  
20 which is May 6th, 2010?

21 A That's the date that this release was  
22 signed. I'm not sure the specific date that they

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1 actually gave notice that they were voiding the  
2 contract.

3 Q Do you have any recollection of them giving  
4 notice that they wanted to release the sales contract?

5 A I mean, yeah, I'm sure they gave notice.

6 Q Okay. Do you have any recollection of when  
7 that was?

8 A Not specifically.

9 Q Do you have any recollection of speaking  
10 with Ms. Wilkes about these persons' desire to release  
11 the sales contract?

12 A Oh, yeah. We had the discussion about them  
13 voiding the contract due to the home inspection.

14 Q Do you recall what Mr. Wilkes said to you  
15 when you told her that these people wanted to release  
16 the sales contract?

17 A No, I don't recall what her specific  
18 response was.

19 Q Do you recall generally what her response  
20 was?

21 A I think she was bummed that we were going to  
22 have to start all over.

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1 Q Okay. And am I correct that she still  
2 wanted to sell the house?

3 A As far as I knew.

4 Q All right. Can you take a look now at 3108  
5 and 3109.

6 A Okay.

7 Q And am I correct that the document on 3109  
8 entitled "acknowledgement of receipt of notice" -- was  
9 that never signed by this person that's identified as  
10 Aaron, A-a-r-o-n, Mormann, M-o-r-m-a-n-n?

11 A The notice itself?

12 Q Yes.

13 A No. The notice was signed by Ms. Wilkes  
14 because -- because she's given notice. Notice is  
15 unilaterally done. And then I made a copy of the  
16 receipt, his receipt of that notice.

17 Q And that's what the document that's labeled  
18 3108 is for?

19 A Yeah.

20 Q So am I correct that after this sales  
21 contract dated April 21st, 2010 was signed, that  
22 Ms. Wilkes then gave notice to her tenant to vacate

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1 A Correct.

2 Q And that this was the date at which time the  
3 house was being offered to rent; is that right?

4 A Correct.

5 Q And could you take a look, please, at 3223?

6 A Okay.

7 Q And that's the deed of lease with a  
8 gentleman named Aaron Mormann, correct?

9 A Correct.

10 Q And could you look through and tell me if  
11 I'm correct that this document goes through page 3232;  
12 is that right?

13 A Yes. Yes.

14 Q And on the first page of 3223 --

15 A Uh-huh.

16 Q -- under section 2, the lease term  
17 originally ended on March 31st, 2010?

18 A Correct.

19 Q And so this lease was extended for  
20 30 days -- well, strike that. So under paragraph 2,  
21 this lease term was extended beyond March 31st, 2010,  
22 right?